CA2 ALTR
2001k21
c.2

ALBERTA LEGISLATURE LIBRARY
3 3398 00264 1198

REVIEW OF CANADA'S POLICY FOR INTERNATIONAL SCHEDULED AIR SERVICES

INITIAL COMMENTS

IN RESPONSE TO

TRANSPORT CANADA'S FEBRUARY 2001

ISSUES FOR DISCUSSION PAPER

LEGISLATURE LIBRARY
MAY 14 2002

Alberta Department of Transportation

April 20, 2001

FOREWORD

These initial comments have been prepared in response to Transport Canada's Review of International Scheduled Air Services Policy **Issues for Discussion** paper, circulated on February 7, 2001.

They were compiled subsequent to discussions with key Alberta stakeholders, and are based on the premise that the needs of travellers, shippers and communities should be paramount in any such policy.

Alberta Department of Transportation

April 20, 2001

[air inter policy review paper - FINAL]

CONTENTS

FOREWORD

EXECUTIVE SUMMARY i

1.0 INTRODUCTION 1

2.0 CONTEXT AND SCOPE 2

3.0 PART ONE – OBTAINING AIR TRANSPORTATION RIGHTS 5

- 3.1 Current Policy and Direction for a New Policy – 5
- 3.2 Negotiating Air Agreements – 7
- 3.3 Negotiating Fifth Freedom Rights – 10
- 3.4 Code-Share Rights – 11
- 3.5 All-Cargo Rights – 12
- 3.6 Tariffs – 14
- 3.7 Ownership of Foreign Carriers – 15
- 3.8 Multilateral Regulation of International Air Services – 16
- 3.9 Foreign Carrier Access – 17

4.0 PART TWO – ALLOCATING RIGHTS 19

- 4.1 Carrier Designations – 19
- 4.2 "Use It or Lose It" – 21
- 4.3 Allocation of Fifth Freedom Rights Among Canadian Carriers – 22
- 4.4 Cargo Transshipment Program – 23

EXECUTIVE SUMMARY

Introduction, Context and Scope:

The true performance measure of airline policy – domestic or international, passenger or cargo – is not carrier satisfaction but rather **consumer** satisfaction.

Since airline restructuring began, Canadians have complained in record numbers about air-service quality, fares, schedules, connections, and other important matters. During sessions held in Alberta over the past few years, shippers, travellers, communities and other stakeholders have expressed strong dissatisfaction with the current airline policies of the federal government. This has been the case with both domestic restructuring and Canada's international policy.

The following initial comments reflect what stakeholders have told us about the need to get out in front of most other countries and aggressively liberalize Canada's international air policy and procedures. Without significant changes, the Canadian economy will not have the international air services it needs to maximize its potential in tourism, manufacturing and other sectors, during this era of intensive globalization.

These comments have been prepared in response to Transport Canada's Review of International Scheduled Air Services Policy **Issues for Discussion** paper, circulated on February 7, 2001. Transport Canada states its objective as "seeking the views of Canadian stakeholders on how Canada's policy for international scheduled air services should be liberalized" (**Issues for Discussion**, p. 2). Additionally, Transport Canada has just initiated a review of air transportation as it relates to the General Agreement on Trade in Services (GATS).

The Minister of Transport correctly identified a number of key issues for the Canada Transportation Act Review Panel to consider, as means of ensuring that **its** deliberations had the proper scope and context. These included meeting the challenge of globalized logistics and e-business and addressing policy issues related to "newly arising industry structures". The Minister's issues apply as much to a review of international air policy as to any other key component of Canada's transportation system.

.../ii

The basic Government of Alberta positions outlined below result from a comprehensive consultation process related to the CTA Review, the Alberta Aviation Strategy initiative, and follow-up contacts with key Alberta stakeholders.

As a final comment before proceeding to Transport Canada's specific questions, the need to further modernize airline, charter, airport and cargo policies – both domestic and international – will be paramount if a liberalized international scheduled air policy is to fully meet the future needs of travellers, shippers and communities.

Part One – Obtaining Air Transportation Rights:

As described in its **Overall Position Paper for Consideration by the CTA Review Panel** (November 17, 2000), the Government of Alberta believes that international air policy "must be based on the specific needs of our economy, today and tomorrow – not the narrow needs of the airline industry. The federal government must re-examine its approach towards international bilateral agreements, particularly if the dominant carrier in Canada is not interested in linking certain foreign markets with Canadian destinations" (p. 9).

The needs of Canada's economy are best met in a competitive environment, no matter what segment is involved. The "essential needs" mentioned by Transport Canada all can be met, provided that Air Canada and other Canadian carriers operating internationally are prepared to: (i) step out from behind restrictions imposed by government on foreign competitors; (ii) work with travellers, shippers, communities, business groups, trade development organizations, tourism promoters, airport authorities, and governments; and (iii) capitalize on the wider opportunities available through a highly liberalized international air policy.

More specifically, Alberta's **Overall Position Paper** recommended that the CTA Review Panel call upon the federal government (amongst other things) "to greatly liberalize the current approach to international air policy by aggressively moving to expand open-skies agreements with other countries, beginning with a push to include air-cargo traffic rights under the General Agreement on Trade in Services" (p. 18).

.../iii

A phase-in period would be required, but with strict objectives and aggressive target dates by which each phase of liberalization was to be achieved.

There are two areas where restrictions on liberalization could apply during the interim period when open-skies agreements are being concluded: cabotage and reciprocity. Some stakeholders are against cabotage, fearing that large, foreign carriers might enter the domestic market with an unfair advantage over Canadian carriers. We are willing to concede continued restrictions in the interim if this is what Canadian carriers and airports truly need.

We would support reciprocity of **opportunity** (not operation) as a restriction on liberalization. Authorization of foreign carriers to exercise their rights should not be held up by Canadian carrier indifference to the start of service. In other words, foreign carriers should be able to exercise their rights whether Canadian carriers used their rights or not. The unilateral granting by Canada of open access would not be precluded under this approach. In effect, Canada would be adopting a "reverse-onus" approach to the granting of rights.

The existence of airline alliances makes it all the more necessary to liberalize international air policy, to ensure that all carriers – domestic or foreign – can serve all routes. As long as restrictive bilaterals exist, it would be advantageous for the federal government to intervene against the Star Alliance, rather than in support (assuming that Air Canada stays with Star).

Where passenger service is concerned, fifth-freedom rights are becoming less and less relevant, due to alliances and long-range aircraft. Until open-skies agreements become the norm, they should be encouraged as a means of, as the paper suggests, expanding competitive options "to the benefit of travellers" (p. 9). Where cargo service is involved, fifth-freedom rights will continue to be useful for triangular routings as long as restrictive bilaterals continue, given the one-way nature of typical cargo flows. Indeed, it may be essential to the viability of the overall service. Shippers and communities have been requesting these changes and would be the obvious winners.

.../iv

Until open-skies agreements become the norm, a code sharing agreement should be supported if it improves access, service level and competition.

All-cargo and passenger services are two different products. There should be no linkage, so as to avoid past situations where one community has been denied needed all-cargo service in an attempt to obtain passenger benefits for some other community, perhaps at the other end of the country.

Tariffs should be left to the marketplace wherever possible, as in other modes of transport. As the Paper itself suggests, "comprehensive price regulation may be problematic, is difficult and resource intensive" (p. 12). One area genuinely requiring attention is attendant air fares for persons with disabilities. Alberta's **Overall Position Paper** to the CTA Review Panel recommended that federal legislation enshrine "the right of persons with disabilities to bring along a bonafide attendant, free of charge, on all modes under federal jurisdiction" (p. 47) – as a matter of basic equity.

Multilateral arrangements would be a logical step beyond bilateral open-skies agreements in meeting the needs of our travellers, shippers and communities. The world is moving towards trading blocs, and all transportation modes must follow in support. This is why Alberta's **Overall Position Paper** called for the inclusion, now, of air-cargo traffic rights under GATS (p. 18).

The federal government's foreign-carrier access provisions were a welcome attempt to move beyond looking at only carrier interests, a recognition that Canada need not always achieve an exchange of routes in order to reach an air agreement. But moving quickly to more open-skies agreements would largely make redundant the need for provisions specific to situations where a Canadian carrier was not interested in providing service.

During future international air agreement negotiations, the federal government should consult intensively and provide observer status to key shippers, travellers, communities, provincial and territorial governments.

.../v

Part Two – Allocating Rights:

The marketplace should decide how many Canadian carriers serve each country. It is unlikely, in any case, that there would be a proliferation of carriers in smaller markets. Moving quickly to open-skies agreements would render this issue obsolete, but in the interim, one solution worth considering would be as mentioned earlier: grant rights to unaligned carriers and let Air Canada compete in alliance with its Star partner.

The only circumstances under which restrictions on the number of Canadian carriers would be warranted is if the foreign country refused to agree to open access. In this case, any opening up of the market that the federal government could achieve would be welcome, whether by renegotiation of the bilateral or liberal application of code rights to carriers shut out of the market.

Current "use it or lose it" provisions will continue to be necessary, to ensure that carriers do not stockpile rights when other carriers might be willing to exercise them. By moving to open-skies agreements, the federal government would no longer have to pick winners, as the marketplace would decide.

Requiring twice weekly, own-plane service to maintain a "being utilized" status is more onerous on all-cargo than passenger operations. More flexibility would assist the development of an all-cargo carrier or carriers based in Canada – a crucial need if the air mode is to be able to meet the future needs of shippers and realize its future potential.

Pending more open-skies arrangements, the cargo-transhipment program should be made available to as many airports as might benefit. Anything that encourages intermodal transportation of goods or passengers should be fully encouraged by the international air policy.

Finally, where under-utilized airports are concerned, the federal government should be facilitating new international air services wherever travellers and shippers need them, by either Canadian or foreign carriers – not trying to give some airports an advantage over others by imposing unnecessary restrictions.

1.0 INTRODUCTION:

These initial comments have been prepared in response to Transport Canada's Review of International Scheduled Air Services Policy **Issues for Discussion** paper, circulated on February 7, 2001.

Answers are provided to the questions posed by Transport Canada, on the understanding that, as outlined in the covering letter from the Deputy Minister of Transport, the objective at this juncture is to solicit "views on the issues and questions" set forth in the issues paper.

The covering letter went on to specify this course of action:

- release of a **draft policy outline** "in the spring for stakeholder comments";

- preparation of a **policy statement** "in light of the comments received", for transmittal to the Minister; and

- release of the **new policy** during "the summer", with implementation to take place "at the end of October 2001".

It would appear that further stakeholder consultation will be restricted to the "draft policy outline".

Our comments take into consideration the views expressed on international air policy at three workshops sponsored by the Alberta Economic Development Authority at the request of the Government of Alberta, in connection with the ongoing review of the **Canada Transportation Act (CTA)**. The Panel reviewing the **CTA** has a responsibility to address international air policy, given that the legislative basis for the policy is provided by this act. Our comments also bear in mind stakeholder views heard during meetings involving the Alberta Aviation Strategy initiative.

The Minister of Transport correctly identified a number of key issues for the CTA Review Panel to consider, as a means of ensuring that its deliberations had the proper scope and context. These included:

- ensuring that necessary capital expenditures are made in the transportation system;

.../2

- meeting the challenge of globalized logistics and e-business;
- addressing policy issues related to "newly arising industry structures"; and
- supporting sustainable development objectives.

The Minister's issues apply as much to a review of international air policy as to any other key component of Canada's transportation system. Furthermore, we believe that international air services must be viewed as existing **primarily to serve the growing needs of travellers, shippers and communities**, not always those of carriers and others engaged in meeting these needs.

The Alberta Minister of Transportation has advised both the Minister of Transport and the Chair of the CTA Review Panel of his concern that Transport Canada's review of international air policy appears to be proceeding parallel to the CTA Review, and according to different timelines. Furthermore, Transport Canada has just initiated a review of air transportation as it relates to the General Agreement on Trade in Services.

Clarification of the relationship between these various initiatives is needed.

2.0 CONTEXT AND SCOPE:

Transport Canada states its objective as "seeking the views of Canadian stakeholders on how Canada's policy for international scheduled air services should be liberalized" (**Issues for Discussion**, p. 2).

The focus is "on the economic and policy issues ... including the extent to which the policy should be liberalized and the effect of that liberalization on the Canadian airline industry, airports, communities, travellers, shippers and the trade and tourism sectors" (p. 3).

Transport Canada has divided these issues into two streams:

- how Canada approaches the negotiation of air traffic rights with other countries ("external policy considerations"); and

- how Canada manages the allocation of rights to Canadian carriers ("internal policy considerations").

Transport Canada wishes to exclude the following matters from this review:

- cargo charter services and designations (policy implemented in 1998);

- international passenger charter services (policy liberalized somewhat in 2000);

- domestic air services of any type (including the current restructuring process); and

- aviation safety or security.

Transport Canada makes no reference to the CTA Review process, which, as mentioned earlier, is charged with reviewing **all** aspects of the **CTA,** including those pertaining to international air policy. The Panel appears to accept this responsibility, when it indicates in its January 2000 **Issues under Consideration** paper that it wants to know if there are any "practical proposals to enhance trans-border and other international competition" in the air mode (p. 2).

We wish to point out that it is difficult to consider changes to international scheduled air policy without evaluating corresponding changes to related policies. Specifically, decisions on international scheduled air policy affect:

- **Charter Passenger Policy**: Air Canada competes for "must-go" traffic, as well as the charter operators' target market. Changes made to scheduled policy, without corresponding changes to the charter policy, could introduce market distortions.

.../4

- **Domestic Airline Market**: Domestic carriers that could provide "beyond gateway" linkages to foreign carriers must be able to serve the same airports as the foreign carriers. For example, current policy tends to direct foreign carriers to Toronto Pearson, but WestJet has been unable to secure slots at Pearson and thus would be unable to link with foreign carriers there. If this **international air policy** were to persist, it would require changes to **domestic air policy** (e.g., slot allocation) or federal **airport policy** (to ensure airports have adequate capital for expansion).

- **Cargo**: Transport Canada has historically tied cargo and passenger issues together, despite the reality that cargo transported by freighters is very different than cargo carried in the bellyhold of passenger aircraft. This sometimes has hindered cargo access in order to achieve objectives in the passenger arena.

Thus, the need to further modernize charter, domestic (air and airport), and cargo policies will be paramount if a liberalized international air policy is to meet – to the maximum extent possible – the future needs of travellers, shippers and communities.

3.0 PART ONE – OBTAINING AIR TRANSPORTATION RIGHTS:

3.1 Current Policy and Direction for a New Policy:

Question 1: "What should be the objectives of Canada's policy for scheduled international air services and why? Is it possible to establish objectives that meet the essential needs of all stakeholders?" (p. 5)

As described in its **Overall Position Paper for Consideration by the CTA Review Panel** (November 17, 2000), the Government of Alberta believes that international air policy "must be based on the specific needs of our economy, today and tomorrow – not the narrow needs of the airline industry. The federal government must re-examine its approach towards international bilateral agreements, particularly if the dominant carrier in Canada is not interested in linking certain foreign markets with Canadian destinations" (p. 9).

The needs of Canada's economy are best met in a competitive environment, no matter what segment is involved. Bilateral agreements can lead to non-competitive situations, where only one carrier is designated from each country and those carriers are part of the same carrier alliance – reinforcing the need for a new, more open approach designed to maximize competition.

Question 2: "If not, how should the Government deal with the sometimes conflicting interests of various Canadian stakeholders? What criteria should be used to establish appropriate trade-offs?" (p. 5)

The general trend, where transportation is concerned, is for governments to stop attempting to balance stakeholder needs or "establish appropriate trade-offs".

The reason governments stopped trying to play this role where other modes were concerned was because experience over many years demonstrated that the main result was inefficient, costly service out of tune with the needs of users. The reality is that the Canadian air mode is neither special nor deserving of unique treatment in this regard.

The "essential needs" mentioned by Transport Canada all can be met, provided that Air Canada and other Canadian carriers operating internationally are prepared to: (i) step out from behind restrictions imposed by government on foreign competitors; (ii) work with travellers, shippers, communities, business groups, trade development organizations, tourism promoters, airport authorities, and governments; and (iii) capitalize on the wider opportunities available through a highly liberalized international air policy.

Question 3: "What are your views on the extent and pace of liberalization? Should liberalization be effected at one time or should it be phased in?" (p. 5)

The Government of Alberta's **Overall Position Paper** recommended that the CTA Review Panel call upon the federal government: "(1) to greatly liberalize the current approach to international air policy by aggressively moving to expand open-skies agreements with other countries, beginning with a push to include air-cargo traffic rights under the General Agreement on Trade in Services [GATS]; (2) to ensure that no co-terminalization restrictions on cargo services exist in such agreements; and (3) to remove unnecessary restrictions on prior sale of tickets on a new route and the occasional use of foreign airlines' aircraft and flight crew" (p. 18).

A phase-in period would be required, but with strict objectives and aggressive target dates by which each phase of liberalization was to be achieved.

Question 4: "What restrictions on liberalization, if any, do you view as essential and why?" (p. 5)

There are two areas where restrictions on liberalization could apply during the interim period when open-skies agreements are being concluded: cabotage and reciprocity. Some stakeholders are against cabotage, fearing that large, foreign carriers might enter the domestic market with an unfair advantage over Canadian carriers. We are willing to concede continued restrictions during this interim period if this is what Canadian carriers and airports truly need. (It is unlikely, in any case, that cabotage would be effective in increasing competition within Canada, given the economics of using intercontinental aircraft on domestic extensions.)

We would support reciprocity of **opportunity** (not operation) as a restriction on liberalization. Authorization of foreign carriers to exercise their rights should not be held up by Canadian carrier indifference to the start of service. In other words, foreign carriers should be able to exercise their rights whether Canadian carriers used their rights or not.

The unilateral granting by Canada of open access would not be precluded under this approach. For example, Canada could open up passenger or cargo access to a foreign carrier unilaterally, and continue to honour such rights as long as no Canadian carrier had been rebuffed in its request to start a service to that carrier's home nation. In effect, Canada would be adopting a "reverse-onus" approach to the granting of rights.

3.2 Negotiating Air Agreements:

Question 5: "Should Canada adopt a standard approach to bilateral negotiations without differentiating between large and small markets?" (p. 8)

Yes, because the only apparent purpose of such differentiation is to protect the perceived interests of Canada's dominant airline. Aggressive liberalization means treating the needs of travellers, shippers and communities foremost, and is a must in large and small markets alike. This would become even more the case should multilateral agreements become the norm, such as under GATS.

.../8

Question 6: "Specifically, should Canada be offering open access to Canada for foreign carriers (i.e., multiple carrier designation, access to all cities with no limits on capacity with possible limitations on fifth freedom rights):

- **(i) only if equivalent access is offered by the foreign government?**
- **(ii) only if equivalent access and other rights of importance to Canadian carriers, like code-share rights, are offered?**
- **(iii) only if there is potential for significant foreign traffic generation (considering the potential benefits accruing to the Canadian economy from that foreign traffic)?**
- **(iv) only if Canadian carriers could effectively compete in the marketplace (and even in the event that the foreign airline carries significant amounts of sixth freedom traffic)?**
- **(v) only if it would be of significant benefit to competition and consumers, regardless of the reciprocal benefits for Canadian carriers?" (p.8)**

This question, and the sub-questions, miss the fundamental point: that the role of the federal government should be to set conditions for the final objective listed above, namely to ensure "significant benefit to competition and consumers". It will be up to Canadian carriers to do what they have already proven they can do under the Canada-U.S. Open-Skies Agreement: compete successfully with anyone. (In this regard, our vision of open skies includes the elimination of restrictions on third, fourth and fifth freedoms, not just third and fourth.)

Until this becomes the reality, we support a "reverse-onus" approach, whereby open access would be granted to all foreign carriers except those from countries that deny access to Canadian carriers.

Question 7: "If equivalent access or other rights of value are not offered by the foreign government, should Canada continue to use access to Canadian cities (and other rights) as leverage to obtain what Canadian air carriers need to offer or expand services?" (p. 8)

The governing objective should be to ensure that necessary international air services are available by whatever carriers – domestically or foreign-owned – are ready to provide them.

As with the other modes, ownership should not be the primary consideration. Furthermore, the trading off of access to one city in order to wrest access to another, or to gain some other perceived "right of value", may have been appropriate in the past but is no longer so in this era of globalization.

Open-skies agreements, of course, take care of the reciprocity issue. In the meanwhile, the "reverse-onus" approach described above should be implemented.

Question 8: "What considerations are most important when access to destinations in the foreign territory are of little or no interest to Canadian carriers and foreign carrier services could lead to the diversion of significant amounts of traffic from Canadian to foreign carriers?" (p. 8)

Please see answer to Question 7 directly above. Surely if there is a demand for service to a specific country and Canadian carriers are unwilling to provide that service, Canadian carriers should have no right to complain if some traffic were to be diverted to a foreign carrier that is willing to step in.

Moving to more open-skies agreements would make it unnecessary for the federal government to play its traditional role of referee in this and most other instances. An important side issue here is that the prime movers of international air services – travellers, shippers and communities – do not have access to data in order to challenge claims made by airlines as to diversion.

.../10

Question 9: "Should the existence of an alliance agreement between a Canadian carrier and the foreign country's carrier affect Canada's negotiating strategy and, if so, how?" (p. 8)

The existence of such alliances makes it all the more necessary to liberalize international air policy, to ensure that all carriers – domestic or foreign – can serve all routes.

As long as restrictive bilaterals exist, it would be advantageous for the federal government to intervene against the Star Alliance, rather than in support (assuming that Air Canada stays with Star). For example, where only a single Canadian carrier is designated for service, and the foreign-designated carrier is in the Star Alliance with Air Canada, it would be pro-competitive to designate a non-aligned Canadian carrier in order to inject some competition into the marketplace. Air Canada would still be able to compete in the market, albeit in a code-share form and making use of their Star Alliance partner's equipment. The same policy would be applied to any another Canadian carrier should it join an airline alliance.

3.3 Negotiating Fifth Freedom Rights:

Question 10: "Should Canada have a more open approach to the negotiation of fifth freedom rights, and if so, in what circumstances?" (p. 9)

The answer is yes. Fifth-freedom rights should not be seen primarily in a negative light, as suggested in the paper's comment that granting them may raise "the prospect of a foreign carrier service where no direct competing Canadian carrier service is possible" (p. 9). Use of the word "possible" instead of "provided" here suggests that Canadian carriers serve every feasible route, when this is clearly not the case.

As mentioned earlier, our vision of open skies includes the elimination of restrictions on third, fourth and fifth freedoms, not just third and fourth.

Question 11: "What should be the primary policy consideration when a Canadian carrier opposes the granting of fifth freedom rights due to negative impact on its services but a Canadian community is interested in obtaining a new foreign carrier service made possible through the exercise of such rights? Should the existence/non-existence of a Canadian carrier service on the route in question be a consideration? Or should competition and consumer interest be the primary policy consideration? (pp. 9-10)"

Using the words from Question 11, "competition and consumer interest" should always be the primary policy consideration, not whether a Canadian carrier has decided to serve the route or not. Where **passenger** service is concerned, fifth-freedom rights are becoming less and less relevant, due to alliances and long-range aircraft. Until open-skies agreements become the norm, these rights should be encouraged as a means of, as the paper suggests, expanding competitive options "to the benefit of travellers" (p. 9).

Where cargo service is involved, fifth-freedom rights will continue to be useful for triangular routings as long as restrictive bilaterals continue, given the one-way nature of typical cargo flows. Indeed, it may be essential to the viability of the overall service. Shippers and communities have been requesting these changes and would be the obvious winners.

3.4 Code-Share Rights:

Question 12: "As a matter of policy, should Canada have codified policy provisions regarding code-share services?" (p. 10)

Until open-skies agreements become the norm, a code sharing agreement should be supported if it improves access, service level and competition.

Question 13: "If so, what types of provisions should be established? For example, if a choice must be made, should obtaining own-aircraft rights have a higher priority than obtaining third country code-share rights? How should an airport's concerns about granting third country code-share rights to a foreign carrier be addressed? What if foreign carriers want broader code-share rights than those sought by Canadian carriers?" (p. 10)

The objective must be to provide the best service possible, and this means maximum competition and minimal restrictions. Where two carriers are in a code-share arrangement, the path should be open to an additional carrier, Canadian or foreign-owned, to also serve the route concerned, to ensure maximum competition.

This also would assist the interests of airport operators, who naturally would prefer more than one airline making use of (and paying for) facilities and services provided, rather than just one under a code-share arrangement. Furthermore, any restrictions on alternate routings joining the same end points must be removed where only a code-share makes financial sense.

3.5 All-Cargo Rights:

Question 14: "Should Canada continue to negotiate all-cargo rights based on the needs of the Canadian airline industry or should it adopt, as matter of policy, an approach of concluding arrangements that focus more closely on the needs of shippers and the potential benefits for competition and consumers? Should such rights be linked to an exchange for passenger traffic rights of commensurate value?" (p. 11)

The answer is obvious. In an era of globalization, all modes of transportation must be based primarily "on the needs of shippers and the potential benefits for competition and consumers". All-cargo and passenger services are two different products. There should be no linkage, so as to avoid past situations where one community has been denied needed all-cargo service in an attempt to obtain passenger benefits for some other community, perhaps at the other end of the country.

.../13

Question 15: "To what extent should concerns over the diversion of cargo from Canadian carrier passenger services to foreign carrier all-cargo services be part of the Government's consideration?" (p. 11)

The federal government's primary role should **not** be to protect the interests of air carriers. To do so would be to constrain the legitimate needs of Canadian shippers in today's global economy. In an era of growing value-added production, e-commerce and high-technology, the potential out there is enormous, just waiting to be tapped by Air Canada and other Canadian carriers operating internationally. Our carriers should be developing markets rather than trying to funnel existing traffic through one or two gateways, on a limited number of flights.

Diversion of cargo from Canadian passenger flights to dedicated foreign-carrier, all-cargo flights is, in any case, an overrated concern: bellyhold freight typically is priced lower and goes when space is available; dedicated all-cargo freight is premium-priced and goes at set times, no matter what. Future policy should take this into account, and avoid retaining restrictions with little payback and, worse, some potential for preventing needed cargo services.

Question 16: "Should Canada consider a liberal approach to granting foreign carriers fifth freedom all-cargo rights? If not, in what circumstances, if any, should such rights be granted?" (p. 11)

Again, as long as restrictive bilaterals continue, fifth-freedom rights will continue to be useful – in some cases necessary – for triangular routings.

Question 17: "Should the approach Canada adopts be dependent on whether one or more Canadian carriers enter the international all-cargo market?" (p. 11)

Shippers need transportation, and it should be of no consequence whether a Canadian or foreign carrier provides it.

Question 18: "If a foreign government is unwilling to grant passenger rights sought by a Canadian carrier, should Canada use the foreign government's interest in cargo rights as leverage to obtain the passenger rights of interest to Canada or should passenger and cargo issues be considered separately?" (p. 11)

The federal government should remove itself, as soon as possible, from the business of trying to control the aviation marketplace by picking winners and losers, so that all customers get the service they need.

3.6 Tariffs:

Question 19: "Should Canada have a specific policy regarding international air tariffs or continue to establish bilateral air tariff regimes on a case by case basis, liberalizing tariff arrangements where possible?" (p. 13)

Tariffs should be left to the marketplace wherever possible, as in other modes of transport. The needs of travellers and shippers will not be met by government attempting to protect the interests of Canada's airlines by restraining prices, nor in the long run will our carriers benefit if they are protected from international competitive forces. Furthermore, as the Paper itself suggests, "comprehensive price regulation may be problematic, is difficult and resource intensive" (p. 12). In reality, the ability of governments to police tariffs in any mode is highly questionable. If truly competitive conditions are in place, there is no need for this type of intervention.

One area genuinely requiring attention is attendant air fares for persons with disabilities. Forecasts right across Canada show a dramatic increase in the proportion of persons having transportation disabilities. Many must be accompanied on their trips, which means double the cost unless the carrier provides for free or reduced fares for attendants. The airline industry does provide 50% discounts but refuses to allow attendants to travel free of charge – in contrast to carriers in all the other modes, and despite the possibility that this refusal could lead to human-rights rulings which end up mandating this.

.../15

The Government of Alberta, in its **Overall Position Paper for Consideration by the CTA Review Panel,** recommended that the Review Panel call upon the federal government: "(1) to prepare, in concert with stakeholders, a national accessibility policy; and (2) to enshrine in legislation the right of persons with disabilities to bring along a bonafide attendant, free of charge, on all modes under federal jurisdiction" (p. 47).

Question 20: "Should 'price leadership' by foreign carriers in Canada-third-country markets continue to be controlled? In what circumstances, if any, should Canadian carriers be protected from low price initiatives by third-country foreign carriers?" (p. 13)

This type of regulation is always difficult, usually ineffective, and often hard to justify. It may only postpone the inevitable adjustments Canadian carriers are going to have to make to meet such competition.

In any case, "price leadership" does not necessarily equal anti-competitive behaviour. The key test is whether it benefits travellers and shippers.

Where pricing is clearly anti-competitive and destructive (especially in monopolistic situations), the Competition Bureau and Tribunal has jurisdiction. Prevention is best achieved through opening up markets to competition.

3.7 Ownership of Foreign Carriers:

Question 21: "How should Canada treat foreign carriers that are not substantially owned and effectively controlled by nationals of the countries designating them? Should Canada seek concessions in exchange for allowing such carriers access?" (p. 13)

As long as safety can be assured by both Canada and the other country involved in future open-skies agreements, such carriers should be treated as any other carrier. Safety should never be used as a rationale for continuing the traditional system of "seeking concessions" and controlling "who receives the economic benefit of the exchange of rights" (p. 13). This is not a concern for travellers or shippers; furthermore, it is not done with other modes of transport.

.../16

Question 22: "Should Canada adopt incorporation and principal place of business criteria (or similar criteria), provided that the country designating a carrier retains full responsibility for effective safety oversight?" (p. 13)

In a restrictive bilateral environment, this may be necessary, as there will have to be a practical way of ensuring the legitimacy of a carrier being proposed by another country. But such requirements should not be imposed as a means of dictating to another country that it designate a carrier domiciled within its own boundaries.

The primary objective here is to provide needed service regardless of ownership – provided, of course, that safety is assured. This should be accompanied by highly liberalized fifth-freedom rights, thus removing any concern that current restrictions might be abused by accepting carriers domiciled elsewhere than in the other country involved.

3.8 Multilateral Regulation of International Air Services:

Question 23: "What do you see as the relative benefits of bilateral versus multilateral systems of regulations for international commercial aviation?" (p. 13)

Multilateral arrangements would be a logical step beyond bilateral open-skies agreements in meeting the needs of our travellers, shippers and communities. The world is moving towards trading blocs, and all transportation modes must follow in support. This is why Alberta's **Overall Position Paper for Consideration by the CTA Review Panel** called for an initial "push to include air-cargo traffic rights under the General Agreement on Trade in Services" (p. 18).

There are three specific advantages of pushing for multilateral arrangements instead of liberalization, bilateral by bilateral: (i) better service for our travellers and shippers, more quickly; (ii) less expensive and time consuming administration, to meet fast-changing circumstances; and (iii) a chance for our carriers to use their comparative advantages to succeed in the new environment (as Air Canada has done with Canada-U.S. Open Skies).

.../17

Question 24: "Do your views apply equally in the case of core traffic rights and in the case of ancillary services such as ground handling? Why or why not?" (p. 14)

Ground handling and other support services will increasingly be covered under liberalized trade agreements. Ancillary considerations such as this need not prevent progress in achieving better international air services.

Question 25: "If there are objectives that you believe should be pursued multilaterally, which fora do you believe provide the best opportunities for achieving those objectives?" (p. 14)

As mentioned above, the GATS forum should be the starting point for a general initiative, while the U.S. and Mexico could be approached under NAFTA and Pacific Rim countries under APEC.

3.9 Foreign Carrier Access:

Question 26: "Given experience with the foreign carrier access provisions of the policy, should they be retained or eliminated?" (p. 15)

The foreign-carrier access provisions were a welcome attempt by the federal government to move beyond looking at only carrier interests, a recognition that Canada need not always achieve an exchange of routes in order to reach an air agreement.

To a certain degree, evidence of community support has been useful in demonstrating that there is much more value to such agreements than defending the interests of Canadian carriers. But the policy has fallen far short of providing open access, excluding as it does Toronto but including a cap on frequencies and number of points that can be served.

Moving quickly to more open-skies agreements would largely make redundant the need for provisions specific to situations where a Canadian carrier was not interested in providing service.

.../18

During future international air agreement negotiations, the federal government should consult intensively and provide observer status to key shippers, travellers, communities, provincial and territorial governments.

Question 27: "Could the provisions be improved such that new services by foreign carriers are not unduly delayed for the sole purpose of safeguarding present or future interests of Canadian air carriers?" (p. 15)

Yes – please see answer to Question 26 directly above.

Question 28: "If so, should they be liberalized in terms of a) frequency, b) access to Toronto or c) fifth freedom rights?" (p. 15)

Yes, in all of these instances.

Question 29: "Should a different approach be adopted for major Canadian cities versus smaller Canadian cities with little or no international air services, and if so, in what ways should the two approaches differ?" (p. 15)

No.

Question 30: "Would liberalizing the foreign carrier access provisions of the policy carry a risk that Canadian carriers would be denied an opportunity to compete in a foreign market?" (p. 15)

Canadian carriers should be in the forefront of developing international air services, not following foreign carriers into markets involving this country. As with other modes of transportation, it is not government's role to worry over their failure to do so, or to attempt to protect them in any but extraordinary circumstances.

If a Canadian carrier were to decide it was interested in a market served by a foreign carrier under the foreign-carrier access provisions, there would then be a basis for negotiations towards a complete open-skies bilateral agreement. If Canadian carriers were denied rights to serve the other country, then Canada could consider alternative mechanisms for redressing this issue.

4.0 PART TWO – ALLOCATING RIGHTS:

4.1 Carrier Designations:

Question 31: "Should Canada adopt an 'open' designation policy (i.e., a policy of designating all interested Canadian carriers in a foreign market), regardless of market size, if the bilateral rights are available?" (p. 16)

Yes – let the marketplace decide how many Canadian carriers should be serving each country. It is unlikely, in any case, that there would be a proliferation of carriers in smaller markets.

Question 32: "If not, should the concept of a threshold be maintained for multiple carrier designation or should some other criteria be considered? Is restricting the number of designations a useful way of helping Canada's smaller international carriers to develop?" (p. 16)

Please refer to answer to Question 31 directly above.

Question 33: "If bilateral rights are not available to meet the needs of all carriers interested and authorized to provide service under Canada's policy, what criteria should be used for allocating the available rights? For example, in a situation where Canada has limited capacity, is it preferable to have one Canadian carrier operating daily service or multiple Canadian carriers each operating less than daily service?" (p. 16)

It should **not** be the role of government to attempt to engineer desirable outcomes on behalf of private sector airlines. Moving quickly to open-skies agreements would render this issue obsolete.

In the interim, one solution worth considering would be as mentioned earlier: grant rights to unaligned carriers and let Air Canada compete in alliance with its Star partner.

Question 34: "If some restrictions on the number of Canadian carriers designated to operate their own aircraft in a particular market are warranted, what restrictions, if any, should apply to requests for designation for code-sharing on the services of foreign airlines?" (p. 16)

The only circumstances under which restrictions on the number of Canadian carriers would be warranted is if the foreign country refused to agree to open access. In this case, any opening up of the market that the federal government could achieve would be welcome, whether by renegotiation of the bilateral or liberal application of code rights to carriers shut out of the market.

Question 35: "Should Canada continue to seek open designation provisions in bilateral air agreements even if Canada restricts the number of Canadian carriers that may be designated in a market?" (p. 17)

Answer as for Questions 31-34 above.

4.2 "Use It or Lose It":

Question 36: "Are the 'use it or lose it' provisions the best means of encouraging better use of Canada's bilateral rights?" (p. 18)

By moving to open-skies agreements, the federal government would no longer have to pick winners, as the marketplace would decide.

In the meantime, current "use it or lose it" provisions will continue to be necessary, to ensure that carriers do not stockpile rights when other carriers might be willing to exercise them.

Question 37: "Are the criteria used to determine whether a carrier's designation is under-utilized (and therefore contestable) reasonable or do they require modification?" (p. 18)

As long as bilateral agreements exist, the criteria appear to be reasonable, except that twice weekly, own-plane service to maintain a "being utilized" status is more onerous on all-cargo than passenger operations.

More flexibility would assist the development of an all-cargo carrier or carriers based in Canada – a crucial need if the air mode is to be able to meet the future needs of shippers and realize its future potential.

Question 38: "Similarly, are the criteria for selecting winning proposals reasonable? For example, in practice, a carrier proposing service using its own aircraft twice a week has been preferred over a carrier proposing daily or near daily code-share service using foreign carrier equipment. Is this appropriate? If the criteria for selecting winning proposals are not reasonable, what changes do you suggest?" (p. 18)

Service to travellers and shippers should be the paramount concern, not whether code-sharing is involved. The flag on an aircraft's tail does not normally affect service level. Twice weekly service by a Canadian-flagged carrier cannot be deemed a better service for Canadian travellers or shippers than daily service by an aircraft bearing a foreign flag.

.../22

While welcoming service by Canadian carriers, we maintain that if domestically flagged carriers are not willing to provide Canadians with as high a level of service as foreign carriers, the federal government should not be intervening to protect the profitability of those Canadian carriers.

Question 39: "If an established carrier is competing for rights with a less experienced or potential new entrant carrier, what criteria should be used? For example, the service proposal from an established carrier might be more credible but a potential new entrant might offer new competition and potential for greater diversity in the Canadian airline industry." (p. 18)

As long as bilateral agreements exist, preference should be given to new entrants, provided they offer greater competition in the marketplace.

Question 40: "If Canada is unable to acquire the rights required by the winning carrier's service proposal, with the result that no service is or can be offered, under what circumstances should the government re-open the carrier selection process?" (p. 18)

The process should be reopened, with the winning proposal designed to fit within rights available or likely to be available.

4.3 Allocation of Fifth Freedom Rights among Canadian Carriers:

Question 41: "In allocating unused fifth freedom rights, should the Minister of Transport try to accommodate the interests of as many carriers as possible or allocate the rights on a more restricted basis (e.g. in a manner that would support a daily or near daily service by one or two carriers)?" (p. 19)

This issue will become less important as open-skies agreements are negotiated. In the meantime, the federal government should allocate these rights in such a manner as to encourage the best service possible for travellers and shippers, while not trying to protect one carrier as opposed to another.

.../23

Question 42: "Should carriers be permitted to exercise those fifth freedom rights on a code-share service? If so, should a proposal to exercise those fifth freedom rights using own-aircraft be given priority over code-share service?" (p. 19)

The goal is to facilitate the best service possible, regardless of whether code sharing is involved.

4.4 Cargo Transshipment Program:

Question 43: "The Minister of Transport has considered applications from Canadian airports to participate in the transshipment program on a case by case basis. Should the Government continue to proceed in this manner, weighing the benefits for each airport, or should the transshipment policy be made widely available as a matter of policy?" (p. 20)

Pending more open-skies arrangements, this program should be made available to as many airports as might benefit. Anything that encourages intermodal transportation of goods or passengers should be fully encouraged by the international air policy.

The following sentence does require clarification: "It is also understood that any transborder services may be operated by road feeder service using an air waybill, and that Canadian carriers are entitled to carry foreign-to-foreign cargo in bond separately, or in combination with any existing authority to carry cargo to and from Canada" (p. 19). Does the wording, "It is also understood that...", suggest some confusion as to what this policy actually involves?

Question 44: "If a case by case approach is the preferred approach, what criteria should be used to determine whether access to the transshipment program is warranted? For example, should the program remain a benefit only for under-utilized airports as a means of giving them a possible advantage over other airports in attracting new foreign carrier cargo services?" (p. 20)

The federal government should be facilitating new international air services wherever travellers and shippers need them, by either Canadian or foreign carriers – not trying to give some airports an advantage over others by imposing unnecessary restrictions.